COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

	)	
Boston Edison Company,	)	
Cambridge Electric Light Company, &	)	**D.T.E. 03-121**
Commonwealth Electric Company,	)	
d/b/a NSTAR Electric	)	
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COMMENTS OF CONSERVATION LAW FOUNDATION ON THE PROPOSED SETTLEMENT AGREEMENT

I. INTRODUCTION

In October 2003, NSTAR Electric ("NSTAR") filed a proposed standby rate with the Department of Telecommunications and Energy ("Department"). The rate was ostensibly designed to recover the distribution costs associated with providing "standby service" to customers who satisfy some (or all) of their own electric load through utilization of on-site Distributed Generation ("DG"). The Department initiated this proceeding to investigate the propriety of the new rate. The Attorney General intervened as of right pursuant to M.G.L. c. 12, §11E. A number of parties, including the Conservation Law Foundation ("CLF") were allowed to intervene in the proceeding.[1]

[1] The Department granted full intervenor status to, among others, Associated Industries of Massachusetts ("AIM"); the Conservation Law Foundation ("CLF"); the Division of Energy Resources ("DOER"); an intervenor group known as the "Joint Supporters"; an intervenor group known as the New England Distributed Generation Coalition (the "NE DG Coalition"), the Solar Energy Business Association of New England ("SEBANE"), an intervenor group known as the Energy Consortium ("TEC") and a number of utilities and other critical stakeholders.

The proceeding became unusually contentious following the filing of initial comments, engendering considerable motion practice, including the filing of two motions to dismiss that remain pending and minor discovery disputes, and extensive hearings.[2]

In June 2004, NSTAR and group of the intervening parties[3] jointly submitted a Settlement Agreement for approval by the Department. The Settlement is the product of substantial compromise by all parties involved. It represents an appropriate solution in the face of fundamental disagreements about the net economic costs or benefits provided by DG customers. The Department should approve the Settlement, as it upholds the public interest and is fair and reasonable under the circumstances.

II. ARGUMENT

A. Scope of Comments

CLF offers these comments to address some of the questions raised in comments filed in response to, and in opposition to, the settlement and to discuss points of special interest to CLF given our mission and purpose.

B. Standard of Review.

When determining whether to approve a settlement agreement, the Department must review all available information and find that the agreement is consistent with the public interest. See, e.g., Western Massachusetts Electric Company, D.T.E. 99-101, at 5-6 (2000), Commonwealth Electric Company**,** D.P.U. 91-200, at 5 (1993).

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[2] CLF stands behind all assertions we have made and positions we have taken in prior pleadings in this proceeding and our support for the Settlement should not be construed as a repudiation of any such assertions or positions.

[3] NSTAR Electric, AIM, the "Joint Supporters," CLF, DOER and SEBANE.
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C. <u>The Exemptions in the Settlement are consistent with principles of ratepayer equity as there is no evidence they would result in cross-subsidization</u>

Throughout this proceeding there has been considerable controversy regarding whether DG customers are a net cost or a net benefit to an electric distribution utility in general and the NSTAR companies in particular. These are important questions given the precedents requiring that rates be set in a manner that ensures that all ratepayers bear the fair cost of their service. Sadly, despite the sheer heft and bulk of the record in this proceeding it is a question that remains unanswered. As the Attorney General's most recent pleading aptly stated, "[NSTAR] admits that it has very little knowledge of the operating characteristics of existing [on-site generation] and the impact OSG has on distribution system costs." Comments of the Attorney General on the Proposed Settlement ("A.G. Comments") at 12 (citing extensively to the record).

The Comments of the Attorney General on the Proposed Settlement and the Joint Comments on the Settlement and Initial Brief of NEDGC/TEC accurately present the record in this proceeding, showing the dearth of actual evidence concerning the actual cost of Distributed Generation to the system and to other ratepayers and lack of support for NSTAR's basic assumption that "standby customers cause costs to be incurred in the same manner as comparable nonstandby customers." See e.g., Initial Brief of NEDGC/TEC at 29-32.

As NSTAR's witnesses asserted, and intervenors argued, in order to truly gauge the cost and value of Distributed Generation at the very least a full Cost of Service Study was needed and none had been prepared in this case. See generally, Exhibit NSTAR-HCL-7 at 7, Exhibit NSTAR –HSP-1 at 9, Initial Brief of NEDGC/TEC at 21-23.

Despite the evidentiary vacuum regarding the actual value and costs of Distributed Generation the Attorney General argues that "the many discounts and exemptions" in the Settlement will lead to impermissible cross-subsidization of costs by shifting costs from DG customers exempted from standby rates onto other ratepayers. A.G.'s Comments at 11. This assertion is undermined by the astute comments of the A.G. regarding the unfortunate holes in the evidentiary record regarding the costs and benefits of Distribution Generation. To put it in the simplest of terms – since it is impossible to know what costs a customer with Distribution Generation is causing, incurring, preventing or avoiding it is impossible to say that an exemption or discount from standby rates for that customer will result in cross-subsidization and impermissible shifting of costs.

The Settlement is not designed to shift charges and costs between customers but is a compromise position given the absence of clear information about costs and benefits of DG.[4] As there is no evidence in the record that the exemptions and discounts in Settlement would result in the impermissible shifting of costs such concerns can not and should not be an impediment to approval of the settlement.

D. <u>The public interest is broader than issues of ratepayer equity</u>

Although ratepayer equity is a significant component of the "public interest" it is not the only factor that should influence the Department's determination. The public has a strong interest in the benefits that DG provides, not only increased electricity reliability,

[4] CLF has supported and continues to support further meaningful inquiry into the specifics of the DG cost-benefit calculus. It is worth noting that the California equivalent of the investigatory DG docket still open before the Department (DTE 02-38) is delving deeply into these issues – utilizing intervenor funding to provide a level playing field for all participants. Like many other parties we believe that it may not be possible to untangle these issues from a full reconsideration of all of NSTAR's rates. Such a proceeding would also help deal with widespread perception that, in general, NSTAR's rates are too high and that DG customers, along with all ratepayers, are over-compensating NSTAR.

but also increased energy efficiency and improved air quality through reduced emissions from fossil fuel fired central power plants.

Indeed, there is clear statutory direction to "[a]ll agencies, departments, boards, commissions and authorities of the commonwealth" including the Department to "review, evaluate, and determine the impact on the natural environment of all works, projects or activities conducted by them" and mandated that such decision makers "use all practicable means and measures to minimize damage to the environment." G.L. c. 30 § 61.

This direction is especially compelling with respect to the provisions of the Settlement regarding the exemptions for renewable technologies. See, Proposed Settlement Agreement at §§ 2.2(e) & 2.4. Indeed, specific statutory provisions referenced in the Settlement even more clearly codify the Commonwealth's policy regarding the need to foster renewable energy. See generally, G.L. c. 40J, § 4E(f)(1).

Recent statements of policy from the Executive agencies of the Commonwealth, most notably the Massachusetts Climate Protection Plan (See, Exhibit DOER 1-19 (supp) at 25 & 31) reiterate the underlying environmental and social value of fostering renewable energy technologies and deployment of efficient DG.

There is no evidence that these exemptions will result in any burden or cost to any other ratepayer. Moreover, the Supreme Judicial Court has made it clear that while rates can not be wholly premised on environmental benefits it is appropriate that "reasonable costs to be incurred in protecting the environment … may be reflected in a utility's approved rates" Mass. Elec. Co. v. Dept. of Pub. Util., 643 N.E.2d 1029,1034 (Mass. 1994).

Moreover, the Department has long held that rate structures that do not encourage reduced consumption of electricity, and the inherent environmental benefits that flow from such conservation, will be rejected. See, Massachusetts Electric Company, DPU 92-78 (September 30, 1992) at ftnte 102, p. 188 citing and quoting Western Massachusetts Electric Company, D.P.U. 84-25 (1984) at p. 196. The Department should continue this policy of fostering incentives for socially and environmentally responsible behavior through its ratemaking powers.[5] Approval of the Settlement, given the incentives it offers to renewable energy technologies and many classes and types of efficient DG,[6] would be in the public interest.

III. CONCLUSION

Given the uncertainty over the net costs and benefits of DG, the terms of the Settlement strike a reasonable balance. Since the Settlement also enables the continued expansion of renewable energy technologies, it is consistent with the public interest and should be approved.

Respectfully Submitted,
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Dated: June 18, 2004

[5] CLF continues to believe that the referenced precedents of the Department rejecting rates that do not foster conservation by imposing charges regardless of actual demand should stand.

[6] Of course, CLF would not object to expansion of these exemptions to include other installations that efficiently use energy including "Qualified Facilities" pursuant to the federal Public Utility Regulatory Policy Act.